

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56096; File No. SR-NASDAQ-2007-037)

July 18, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, to Modify Order Audit Trail System Rules to Provide an Exemption from Transmission Requirements for Proprietary Orders

I. Introduction

On April 3, 2007, The NASDAQ Stock Market LLC (“Nasdaq”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to provide an exemption from OATS transmission requirements for certain proprietary orders. On June 4, 2007, Nasdaq filed Amendment No. 1. The proposed rule change, as amended, was published for comment in the Federal Register on June 6, 2007.<sup>3</sup> The Commission received one comment letter expressing support for the proposal.<sup>4</sup> On July 17, 2007, Nasdaq filed Amendment No. 2. This notice and order notices Amendment No. 2; solicits comments from interested persons on Amendment No. 2; and approves the proposed rule change, as amended, on an accelerated basis.

II. Description of Proposal

Nasdaq proposes to modify its OATS rules to adopt a limited exemption from OATS<sup>5</sup>

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 55870, 72 FR 32692 (June 13, 2007).

<sup>4</sup> See letter from Stephen Schuler, Managing Member, Global Electronic Trading Company, LLC to Nancy M. Morris, Secretary, Commission, dated July 3, 2007.

<sup>5</sup> OATS is an integrated audit trail of order, quote, and trade information for Nasdaq securities used to recreate events in the life cycle of orders and more completely monitor the trading practices of member firms.

order data transmission requirements for proprietary trading firms. Nasdaq proposes to define a “Proprietary Trading Firm” as a Nasdaq member that trades its own capital, with all the trading being done in the firm’s accounts by traders that are owners of, employees of, or contractors to the firm. A Proprietary Trading Firm would not have “customers,” as that term is defined in Nasdaq Rule 0120(g) and would not be a member of the NASD.

Nasdaq proposes to amend Nasdaq Rule 6955 regarding transmission of OATS data to provide that a Proprietary Trading Firm would be required to transmit OATS order data information to Nasdaq Regulation only upon request.<sup>6</sup> Although a Proprietary Trading Firm would not be required to transmit the order data information to Nasdaq Regulation unless requested, it still would be responsible for maintaining and retaining the information in a format that could be easily integrated into the NASD’s OATS system in the event Nasdaq Regulation makes a request for such information.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2007-037 on the subject line.

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<sup>6</sup> Rule 0130 provides that the term Nasdaq Regulation should be understood as also referring to NASD staff, NASD Regulation staff, and NASD departments acting on behalf of Nasdaq pursuant to a regulatory services agreement between Nasdaq and the NASD.

**Paper comments:**

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2007-037. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2007-037 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to

a national securities exchange,<sup>7</sup> and, in particular, the requirements of Section 6 of the Act.<sup>8</sup> Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act<sup>9</sup> in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

OATS was designed to provide an accurate, time-sequenced record of orders and transactions, beginning with the receipt of an order at the first point of contact between the broker-dealer and the customer or counterparty and further documenting the life of the order through the process of execution. One of the principle objectives of OATS is customer protection through the transparency of the executions of customer orders. The Commission does not believe that the proposed rule change would impact this objective since, by definition, Proprietary Trading Firms do not handle customer orders. Further, the Commission notes that Nasdaq believes that the current requirement for Proprietary Trading Firms to transmit all order data information is onerous and is not offset by an equivalent regulatory benefit. In addition, the Commission notes that this approach parallels the approach undertaken by the New York Stock Exchange (“NYSE”) in NYSE Rule 132C, which requires NYSE members, upon request, to

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<sup>7</sup> The Commission has considered the amended proposed rule change’s impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

transmit order tracking data to the NYSE.<sup>10</sup>

The Commission therefore believes that it is consistent with the Act to permit Proprietary Trading Firms to submit OATS data to Nasdaq only upon request.

V. Accelerated Approval

The Commission finds good cause for approving the proposed rule change, as modified by Amendment Nos. 1 and 2, prior to the thirtieth day after publishing notice of Amendment No. 2 in the Federal Register pursuant to Section 19(b)(2) of the Act.<sup>11</sup> In Amendment No. 2, Nasdaq clarified that the proposed exception from the daily OATS transmissions requirements for Proprietary Trading Firms would not extend to persons associated with Proprietary Trading Firms. The Commission believes that this is a clarifying change to the scope of the proposed rule change and raises no significant regulatory issues. The Commission therefore finds good cause exists to accelerate approval of the proposed change, as modified by Amendment Nos. 1 and 2, pursuant to Section 19(b)(2) of the Act.

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<sup>10</sup> See Securities Exchange Act Release No. 47689 (April 17, 2003), 68 FR 20200 (April 24, 2003) (Order approving SR-NYSE-99-51).

<sup>11</sup> 15 U.S.C. 78s(b)(2). Pursuant to Section 19(b)(2) of the Act, the Commission may not approve any proposed rule change prior to the thirtieth day after the date of publication of the notice thereof, unless the Commission finds good cause for so doing.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-NASDAQ-2007-037), as modified by Amendments No. 1 and 2, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).